

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

HEADWATER RESEARCH LLC,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD and
SAMSUNG ELECTRONICS AMERICA, INC.,

Defendants.

Case No. 2:23-CV-00103-JRG-RSP

**DEFENDANTS' REPLY IN SUPPORT OF ITS
RENEWED MOTION TO STAY PENDING *INTER PARTES* REVIEW**

Headwater cannot show that staying this case is unwarranted. Because Headwater is a pure licensing entity that delayed enforcement of its purported rights, Headwater cannot be unduly prejudiced by a stay. In addition, because the bulk of the parties' expenses remain ahead, Headwater cannot show that the case is too advanced to be stayed. And, because two-thirds of the asserted patents are likely to be eliminated by Samsung's IPRs, Headwater cannot show that the case is unlikely to be significantly simplified.

I. A STAY WOULD NOT UNDULY PREJUDICE HEADWATER

Headwater does not articulate any specific need for an expeditious resolution of its claims, such that it would face *undue* prejudice from a pre-institution stay. *See VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1318 (Fed. Cir. 2014) (“[W]hether the patentee will be *unduly prejudiced* by a stay in the district court proceedings . . . focuses on the patentee’s need for an expeditious resolution of its claim.” (emphasis in original)). The temporary deferral of litigation alone does *not* create undue prejudice, because a “stay will not diminish the monetary damages to which [plaintiff] will be entitled if it succeeds in its infringement suit—it only delays realization of those damages.” *Id.*; *see also Stragent LLC v. BMW of N. Am., LLC*, No. 6:16-CV-446, 2017 WL 3709083, at *2 (E.D. Tex. July 11, 2017); *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-CV-1058-WCB, 2015 WL 1069111, at *2 (E.D. Tex. Mar. 11, 2015).

The Court should disregard Headwater’s claims that it is not an NPE [REDACTED] [REDACTED] (see Opp. at 4-5). The record is clear. Headwater has always been a [REDACTED] [REDACTED] [REDACTED] Ex. 5 (Raleigh 3/7/24 Dep. Tr.) at 28:2-7, 46:25-47:11, 160:2-4. In any event, ItsOn is irrelevant to the present case given that [REDACTED]

[REDACTED]

[REDACTED] To date, Headwater has identified [REDACTED] to the asserted patents. Thus, Headwater can only point to a potential delay in enforcement of patent rights—a “factor [] present in every case in which a patentee resists a stay, and . . . [in]sufficient, standing alone, to defeat a stay motion.” *Village Green Techs., LLC v. Samsung Elecs. Co., Ltd.*, No. 2:22-CV-00099-JRG, 2023 WL 416419, at *2 (E.D. Tex. Jan. 25, 2023); *see also Resonant Sys., Inc. v. Samsung Elecs. Co., Ltd.*, No. 2:22-CV-00423-JRG, 2024 WL 1021023, at *4 (E.D. Tex. Mar. 8, 2024) (“RevelHMI has not identified any prejudice beyond the delay of the vindication of its patent rights and alleged entitlement to collect money damages. Such, on its own, is not enough to show undue prejudice.”). Thus, this factor weighs in favor of a stay.

Moreover, it is Headwater—not Samsung—who has continued to delay the present action. Indeed, Headwater’s “conduct . . . casts doubts on its seriousness as to the prosecution of this case in this Court.” *See Village Green Techs.*, 2024 WL 1021023, at *3. For example, Headwater waited *six years* after its last patent issued to bring this suit—which shows that it did not feel a need for any particularly expeditious enforcement of its alleged rights. No such need now arises simply because IPRs have been instituted against the majority of claims and patents in the case and will be resolved in about 10 months from now. *See CyWee Grp. Ltd. v. Samsung Elecs. Co., Ltd.*, No. 2:17-CV-00140-WCB-RSP, 2019 WL 11023976, at *4 (E.D. Tex. Feb. 14, 2019) (“Further undermining [plaintiff’s] suggestion as to the urgency of obtaining judicial relief is the fact that [it] delayed for more than three years after the issuance of the [asserted] patents before

¹ Samsung notes that Headwater continues to use ItsOn as a sword against Samsung in this case despite having no factual basis to do so and failing to properly answer basic interrogatories about ItsOn’s purported relevance to the case. *See generally* Dkt. 134 (Samsung’s Mot. to Compel re ROG 11).

bringing suit against Samsung.”). Indeed, Dr. Raleigh, founder and CEO of Headwater testified

Ex. 6 (Raleigh 11/15/23 Dep. Tr.) 198:1-9.

These intervening years indicate self-imposed delay that should not now be disregarded to thwart Samsung’s stay motion.

Nor have Headwater’s delays ceased since bringing the present action. For example, Samsung has now accommodated three requests from Headwater to modify the DCO, and Headwater recently moved to extend yet another deadline, largely based on its own failures to promptly seek discovery. *See* Dkt. Nos. 87, 110, 130, 132. Headwater’s pattern of routine delay and obstruction in supposedly vindicating its patent rights has been long-apparent and is well cataloged in Samsung’s reply in support of its original motion to stay. *See* Dkt. 75 at 3.

On the flip side, Samsung filed its first two IPRs in November 2023, less than two months after Headwater served its initial infringement contentions. Shortly after, Samsung completed its final two IPR filings in January 2024, only a month after Headwater served its amended infringement contentions. All IPRs were filed less than five months after Headwater filed its first Amended Complaint on July 24, 2023 (Dkt. 31). Samsung promptly filed its original stay motion after completing IPR filings for all three asserted patents on January 25, 2024 (Dkt. 70). This timeline is well within the scope of what courts in this district have deemed reasonable. *See Emed Techs. Corp. v. Repro-med Sys., Inc.*, No. 2:15-CV-1167-JRG-RSP, 2016 WL 2758112, at *2 (E.D. Tex. May 12, 2016) (“Courts have held that a delay of over seven months can be reasonable.”); *NFC Tech.*, 2015 WL 1069111, at *4 (“[A] delay of seven and one-half months from the filing of the complaint is not unreasonable. That is particularly true [since] the petitions were filed only four months after NFCT served its infringement contentions on HTC.”).

Finally, Headwater cannot credibly claim that a stay would cause undue prejudice because it has recently agreed to a stay in other litigation involving similar patents. *See* Ex. 7. Such conduct is not consistent with Headwater's arguments to the Court in its opposition.

II. THIS CASE IS NOT AT A SUFFICIENTLY ADVANCED STAGE

While some work has been done in this case, “the bulk of the expenses that the parties would incur in pretrial work and trial preparation are still in the future.” *NFC Tech.*, 2015 WL 1069111, at *3 (granting motion to stay with only a month left in fact discovery). As Samsung's renewed motion to stay argues, the upcoming work includes the close of fact discovery (recently extended to September 20th), expert discovery, dispositive motions, *Daubert* motions, motions in *limine*, jury instructions, pre-trial conference, jury selection, and trial. *See* Dkt. 131. Headwater cannot dispute that these substantive stages remain ahead, and in fact insists on creating more work by seeking more depositions. *See* Dkt. 132 at 2-3. The potential to simplify the case before any of these cost-heavy pre-trial litigation activities take place favors a pre-institution stay. Samsung's promptly filed pre-institution motion to stay (Dkt. 70)—filed well over a month before proposed claim terms had even been exchanged (Dkt. 63)—also must be given weight in considering the stage of the case. *Solas OLED Ltd. v. Samsung Display Co., Ltd.*, No. 2:19-CV-00152-JRG, 2020 WL 4040716, at *2 (E.D. Tex. July 17, 2020) (according weight to the timing of defendant's pre-institution stay motion); *e-Watch Inc. v. Apple, Inc.*, No. 2:13-CV-1061-JRG-RSP, 2015 WL 12915668, at *3 (E.D. Tex. Mar. 25, 2015) (same).

Headwater's arguments to the contrary are unpersuasive. In fact, Headwater fails to address the immense cost savings that will result from a stay while at the same time, implicitly recognizing that IPRs are likely to eliminate 60% of this case. *Opp.* at 2. Headwater instead focuses on recently taken depositions and the upcoming close of fact discovery, which pale in comparison to the mountain of upcoming costs both parties face. Headwater's reliance on claim

construction is similarly unavailing. Although a claim construction report and recommendation order has issued, Samsung's objections to that order still require resolution. *See* Dkt. 126.

III. A STAY WOULD INDISPUTABLY SIMPLIFY THE CASE

IPRs have been instituted against 15 out of 25 asserted claims and 2 out of 3 asserted patents. This is not insignificant. According to the PTAB's latest statistics, 78% of instituted claims that reach FWD are invalidated. *See* Ex. 8 (of the instituted claims that reach a FWD, 4,413 were found unpatentable and 1,222 were found patentable).

That the '117 patent IPR did not institute does not change the fact that a stay would simplify the case. This Court has previously found this factor to weigh in favor of a stay when two out of three asserted patents in a case were subject to IPR:

On balance, this factor weighs slightly in favor of a stay. Ericsson filed the IPR petitions and will be subject to estoppel even if no asserted claims are found unpatentable. Thus, '[r]egardless of whether the IPRs result in invalidating the Asserted Claims, there is still a substantial likelihood that the issues will be narrowed' to some degree. *Solas*, 2020 WL 4040716, at *3.

Koninklijke KPN N.V. v. Telefonaktiebolaget LM Ericsson, No. 2:21-CV-00113-JRG, 2022 WL 17484264, at *3 (E.D. Tex. July 7, 2022) (emphasis added).

Similar benefits exist here as there is a substantial likelihood that the issues will be narrowed. As discussed above, two of the three asserted patents are likely to be invalidated which would offer significant narrowing to the parties' upcoming work and number of triable issues. As a result, this factor weighs in favor of a stay.

IV. CONCLUSION

Because all three factors favor the requested stay, Samsung respectfully requests that the Court grant Samsung's renewed motion to stay.

Dated: September 13, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on September 13, 2024. As of this date, all counsel of record had consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A).

/s/ Jonathan B. Bright

Jonathan B. Bright

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I certify that the following document is authorized to be filed under seal pursuant to the Protective order in this case.

/s/ Jonathan B. Bright

Jonathan B. Bright